COURT, U.S.
Supreme Court, U.S.
FILED
DEC 28 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1971

No. 71-841

INDIANA HARBOR BELT RAILROAD COMPANY, *et al.*,
Petitioners,

—v.—

PUBLIC SERVICE COMMISSION OF INDIANA, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF INDIANA

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INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	3
Constitutional Provisions Involved	3
Statement	3
Reasons for Granting the Writ	8
Conclusion	14

APPENDICES:

Appendix A—Entry and Opinion of Commission, December 12, 1969	1a
Appendix B—Decision of Appellate Court of Indiana, October 29, 1970	11a
Appendix C—Petition for Rehearing, November 17, 1970	29a
Appendix D—Petition for Transfer to Indiana Supreme Court, December 2, 1970	35a
Appendix E—Petition for Rehearing on Denial of Transfer, July 7, 1971	43a
Appendix F—Petition for Stay of Mandate and Effective Date of Decision, October 19, 1971	45a

CITATIONS

CASES:

Beck v. Washington, 369 U.S. 541 (1962)	12
Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 281 U.S. 673 (1930)	8

Page

Great Northern R.R. v. Sunburst Oil & Refining Co., 287 U.S. 358 (1932) 8

St. Joseph Stock Yards Co. v. United States, 298 U.S. 38 (1936) 8, 9

State ex rel. City of Marion v. Grant Circuit Court, 239 Ind. 315, 157 N.E.2d 188 (1959) 9, 10

STATUTES AND CONSTITUTIONAL PROVISIONS:

U. S. Constitution, Amendment XIV, Section 1 ..... 3, 7, 8, 12

Indiana Acts 1937, c. 58, Indiana Stat. §§ 55-1326—1338 ..... 3, 4, 10

Indiana Acts 1957, c. 189, § 1, Indiana Stat. § 54-443 ..... 11, 12

Indiana Rules of Civil Procedure, Appellate Rule 11 13

28 U.S.C. § 1257(3) 2

MISCELLANEOUS:

2 Am. Jur. 2d Administrative Law § 656 10

4 Davis, Administrative Law Treatise, § 28.19, p. 106 9

Stern & Gressman, Supreme Court Practice (4th ed. 1969) 8

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PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF INDIANA

The petitioner Indiana Harbor Belt Railroad Company (IHB) prays that a Writ of Certiorari issue to the Indiana Appellate Court to review the decision of the Appellate Court of Indiana entered in the above entitled case on October 22, 1970, which remained undisturbed when the Appellate Court of Indiana denied a petition for rehearing on December 2, 1970, and the Indiana Supreme Court, in the exercise of its discretionary review, denied a petition for transfer and a petition for rehearing on the denial of transfer, the last of which occurred on October 1, 1971.

Opinions Below

The Public Service Commission of Indiana (Commission) entered its written opinion in this case on December 12,

1969. This combined entry and opinion of the Commission dated December 12, 1969, is printed herein at pages 1a to 9a as Appendix A and is not reported in any official or unofficial reports. The decision of the Appellate Court of Indiana dated October 29, 1970, is printed herein at pages 11a to 27a as Appendix B and is reported at 263 N.E.2d 292. The Appellate Court issued no opinion in denying the petition for rehearing before that court. The Supreme Court of Indiana issued no opinion in denying the petition to transfer or the petition for rehearing on the denial of transfer.

Jurisdiction

The Appellate Court of Indiana issued its opinion and judgment on October 29, 1970. A timely petition for rehearing, printed herein at pages 29a to 34a as Appendix C, was filed on November 17, 1970. On December 2, 1970, this petition for rehearing was denied by the Appellate Court without opinion. On December 2, 1970, the IHB filed a petition for transfer to the Indiana Supreme Court, printed herein at pages 35a to 41a as Appendix D. On June 17, 1971, the Indiana Supreme Court denied the petition to transfer without opinion. On July 7, 1971, the IHB filed its petition for rehearing on the denial of transfer, printed herein at pages 43a to 44a as Appendix E. On October 1, 1971, the Indiana Supreme Court denied the petition for rehearing without opinion by docket entry. This petition for certiorari is filed within 90 days of that denial, which represents a final judgment. The IHB filed its petition for stay of mandate and effective date of decision on October 19, 1971, printed herein at pages 46a to 50a as Appendix F. To date the Indiana Supreme Court has not ruled on the petition for stay of mandate and effective date of decision.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

Questions Presented

1. Is it a violation of the due process clause of the Fourteenth Amendment for a reviewing court to abandon its judicial responsibility by refusing to pass on questions of law determined by an administrative agency in imposing a legal obligation against a party?

2. Is it a violation of the equal protection clause of the Fourteenth Amendment for a reviewing court to refuse to pass on questions of law determined by an administrative agency in imposing a legal obligation against one party but to pass on a question of law for another party in the same case?

3. Whether a party who is resisting enforcement of a legal obligation by an administrative body is entitled, as a matter of due process of law and equal protection of the law, to an unequivocal indication that all questions of law necessary to the decision of the case have in fact been reviewed.

Constitutional Provisions Involved

The IHB's claim is founded on the due process clause and the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, which read:

> "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement

This case arises out of a petition filed with the Commission by the Railroad Firemen's Union representative seeking a determination that the IHB is subject to the provisions of the Indiana Full Crew Law, Chapter 58 of the Acts of 1937, Indiana General Assembly; Burns Ind. Stat. Ann. §§ 55-1326—1338.

By its terms the Indiana Full Crew Law only applies to carriers whose main line track exceeds 25 miles in length:

> "(a) The term 'carrier' shall mean a common carrier by railroad, and any receiver of [or] any other individual or body, judicial or otherwise, when in possession of the business of a carrier or carriers covered by this act [§§ 55-1326—55-1338], excluding street, suburban and interurban electric railways, unless operated as a part of a general railroad system of transportation, and excluding common carriers by railroad whose main line track is twenty-five [25] miles or less in length." Burns Ind. Stat. Ann. § 55-1326(a).

The IHB answered the petition filed before the Commission, alleging that the IHB was exempt from the provisions of the Indiana Full Crew Law because its main line track did not exceed 25 miles in length. In support of this contention IHB claimed (a) that only lines of track which it owned or leased should be counted in determining the length of the main line track, (b) that tracks located on branch or lateral lines could not constitute part of the main line track of a railroad, (c) that the length of parallel tracks between the same termini should be disregarded in determining the length of the main line track, and (d) that only track located in the State of Indiana could be considered in determining the length of IHB's main line track for purposes of application of the Indiana Full Crew Law. After the parties herein filed various stipulations of fact, briefs and reply briefs, a hearing was held on the Brotherhood's petition on October 8, 1969. Introduced in evidence as a joint exhibit was a stipulation of facts and issues which had been filed by the parties on July 30, 1968. This stipulation defined four legal issues which traced the answer of the railroad and which the parties argued should be considered by the Commission in determining whether

the IHB was subject to the Indiana Full Crew Law. (See Appendix A, p. 4a.)

All evidence received by the Commission was stipulated. There was no dispute as to any material fact, but instead the controversy centered about the appropriate construction of the statutory term "main line track" and the four legal issues previously agreed upon.

In its order dated December 12, 1969, the Commission determined that

(a) the length of tracks located outside the State of Indiana was not to be counted in determining the length of a railroad's main line track for purposes of application of the Indiana Full Crew Law (See Appendix A, Finding No. 7);

(b) the main line track of a railroad consists of segments of track over which a carrier operates trains through and between stations (Appendix A, Finding No. 8);

(c) the length of main line track of a carrier is determined by counting the segments of track either owned, leased or used pursuant to trackage rights agreements between the carrier and other railroads (Appendix A, Finding No. 10); and

(d) it was unnecessary to count separate parallel tracks located between the same termini in order to determine the length of the main line track of the IHB in the State of Indiana (Appendix A, Finding No. 9).

On October 29, 1970, the Indiana Appellate Court rendered an opinion affirming the decision of the Commission. However, by the Appellate Court's statement in the opinion itself, it limited its review to the question of whether or not there was substantial evidence to support the Commission's determination (Majority Opinion, p. 2). Thus, not

only did the Appellate Court refuse to provide its own construction of the term "main line track," it even refused to review the construction given the term by the Commission in holding the IHB subject to the provisions of the law. Then, contrary to its announced limited review, the Appellate Court went ahead to decide a question of law which provided the basis of the Union's assignment of cross-errors, i.e., whether trackage outside the state should be counted.

Following the determination by the Appellate Court of Indiana, the IHB in (a) a timely petition for rehearing before the Appellate Court, (b) a timely petition for transfer to the Indiana Supreme Court, (c) a petition for rehearing on the denial of transfer, and (d) a timely petition for stay of mandate and effective date of decision urged that the action of the Appellate Court was inconsistent with the due process requirements and the equal protection requirements of the Fourteenth Amendment. These questions were stated most cogently in the Petition for Stay of Mandate and Effective Date of Decision in the following language:

> "(a) The failure and refusal of the Appellate Court and this Court to review the determination of the Public Service Commission of the question of law relating to the proper construction of the term 'main line track' as contained in the Indiana Full Crew Law has deprived the IHB of its constitutional right to a judicial review of questions of law determined by an administrative agency in violation of the Due Process of Law Clause of the Fourteenth Amendment to the Constitution of the United States and the due course of law provision of the Indiana Constitution. [Citations omitted.]
>
> "(b) The restriction by the Appellate Court of Indiana of its judicial review of a determination of the Public Service Commission, an administrative agency, as to whether there was substantial evidence

of probative value to support the Public Service Commission's decision violates the IHB's rights to due process of law under the Fourteenth Amendment to the Constitution of the United States which requires Judicial review of questions of law, procedure and substantial evidence when a party is resisting enforcement of a legal obligation by an administrative body. [Citation omitted.]

"(c) The failure of the Appellate Court to review the construction of the statute given by the Public Service Commission prevented the plaintiff from being able to present to the Supreme Court of this state the new question of law erroneously decided by the Appellate Court and thus denied the defendant the Equal Protection of the Laws under the Fourteenth Amendment to the Constitution of the United States.

"(d) The failure of the Appellate Court to review the construction of the statute given by the Public Service Commission was in violation of the provisions of Article 1, Section 12 of the Indiana Constitution, and by denying the IHB such rights of review while at the same time reviewing a question of law assigned by the Brotherhood of Locomotive Trainmen and Enginemen as the basis for cross-errors, the IHB has been denied Equal Protection of the Law in violation of the Fourteenth Amendment to the Constitution of the United States."

However, these questions were raised at every stage of the proceedings, including the petition for rehearing before the Appellate Court and the two petitions which were filed with the Indiana Supreme Court. (See Appendices C, D and E.)

Since the questions presented concerned issues created for the first time by the decision and opinion of the Indiana Appellate Court, the question was timely and properly raised below by its inclusion in the petition for rehearing in the Appellate Court and on the petition to transfer and

petition for rehearing in the Supreme Court. *Great Northern R.R.* v. *Sunburst Oil & Refining Co.*, 287 U.S. 358 (1932); *Brinkerhoff-Faris Trust & Sav. Co.* v. *Hill*, 281 U.S. 673 (1930); Stern & Gressman, *Supreme Court Practice*, p. 125 (4th ed. 1969).

Despite the fact that the procedural due process questions were raised before the Appellate Court of Indiana and the Indiana Supreme Court, the denial of each of these petitions was without opinion and without express reference to the questions which were timely presented.

Reasons for Granting the Writ

1. The action of the Appellate Court of Indiana and the Supreme Court of Indiana in denying the petitioner a review of questions of law initially determined by an administrative agency is in conflict with the applicable decisions of this Court and the decisions of the highest courts of various states, including the State of Indiana, delineating the basic elements of a full and fair hearing necessary to due process of law.

Though there are multiple questions presented to this Court in this petition for a writ of certiorari, one basic premise underlies all of these questions. The IHB was denied a review of questions of law which were initially determined by an administrative agency, i.e., the Commission. The IHB contends that it has a constitutional right under both the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to a full and complete review of determinations of law made by an administrative agency. Moreover, that form of review must be in the nature of a judicial review though in the present case the IHB was granted neither an administrative nor a judicial review. As Justice Brandeis pointed out in his concurring opinion in the case of *St. Joseph Stock Yards Co.* v. *United States*, 298 U.S. 38 (1936):

> "The supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule of law was applied and whether the proceeding in which facts were adjudicated was conducted regularly. * * *" 298 U.S. at 84.

Few, if any, scholars have analyzed the decisions of this Court which deal with review of administrative agencies more than Professor Davis, who in his treatise on administrative law has drawn the following conclusion:

> "The conclusion seems to be justified that not a single case upholding unreviewability is an entirely satisfactory authority in support of the idea that due process permits denial of review of questions of law, procedure, and substantial evidence when the party seeking review is resisting enforcement of a legal obligation." 4 Davis, *Administrative Law Treatise* § 28.19, p. 106.

This certainly has been the accepted proposition in Indiana since 1959 in the case of *State ex rel. City of Marion* v. *Grant Circuit Court*, 239 Ind. 315, 157 N.E.2d 188 (1959), in which the Honorable Judge Landis recited as follows:

> "* * * Since the landmark case of Warren v. Indiana Telephone Co., 1940, 217 Ind. 93, 26 N.E.2d 399, it is well settled that the right of a party to judicial review is not subject to the grace of the legislative branch of the government. * * *
>
> "* * * Relators concede that we held in Public Service Comm. v. Indiana Bell Tel. Co., 1953, 232 Ind. 332, 108 N.E.2d 889, 112 N.E.2d 751, that the judicial branch of the government may interfere with the rulings of administrative bodies adopted under laws of the legislature whenever a judicial question is involved, * * * *and we must hold that the right to judicial review is not dependent upon the legislature but is guaranteed by the due process and due course of law clauses of the federal and state constitutions (14th Amendment U. S. Constitu-*

> *tion;* Art. 1, § 12, Indiana Constitution), and this constitutional authority may not be denied by legislative action or non-action." [Emphasis added.] 157 N.E.2d at 189-90.

There can be no doubt that in the present case the IHB is resisting enforcement of a legal obligation. The extent of that legal obligation is so great that, as recited in the Petition for Stay of Mandate and Effective Date of Decision filed with the Indiana Supreme Court, compliance with the Indiana Full Crew Law for this one short-line railroad will require an expenditure of approximately $1,000,000 per year and will virtually bankrupt the IHB. Because the Commission was seeking to impose this staggering obligation, the refusal of the Appellate Court of Indiana even to review the construction of the Indiana Full Crew Law by the Public Service Commission denied the IHB its constitutional rights. Additionally, the action of the Appellate Court in limiting the review to the question of whether or not there was substantial evidence of probative value to support the Commission's decision relegated the review to a meaningless exercise in this case since there was no dispute of fact.

The IHB has claimed throughout these proceedings that the Appellate Court of Indiana failed to perform its basic judicial functions in this case. One of the requisites of the basic judicial function is, in the opinion of the IHB, that of construing a statute.

> "The interpretation of statute or regulation involves a question of law, and statutory construction is the function of the courts, which, it is held in some cases, the legislative branch cannot restrict. * * *" 2 Am.Jur.2d *Administrative Law* § 656.

However, perhaps a far more important feature of a court's basic judicial function is, in those instances where a right of review has been given either by statute or as a

matter of constitutional right, to perform a complete review, including a review on matters of procedure, on the question of whether there is substantial evidence to support the agency's determination and *to review all determinations of questions of law.*

It should be pointed out that, while the IHB feels that the appropriate scope of review on questions of law such as are involved in the present case is that the court may substitute its independent judgment as to the questions of law instead of asking only whether there is a reasonable basis for the interpretation given by the administrative agency, that is not the question which the IHB is asking this Court to review. In fact, if the Appellate Court had indicated that either of these tests for review had been utilized, the IHB would have no reason to claim its constitutional rights have been violated. The Appellate Court's own admission that it was restricting its review to the sole question of whether there was any substantial evidence of probative value to suppport the Commission's determination is what created the violation of the IHB's constitutional rights.

Though it should be obvious from the history of the case related previously herein, the Appellate Court was the first forum which could have afforded a review of the decision of the Public Service Commission. This mode of review is specifically provided for by statute, Burns Ind. Stat. Ann. § 54-443, which provides as follows:

> "54-443. *Appeal to Appellate Court from final decision, ruling or order of commission—Transfer to Supreme Court — Assignment of errors.*—Any person, firm, association, corporation, city, town or public utility adversely affected by any final decision, ruling, or order of the public service commission of Indiana, may, within thirty [30] days from the date of entry of such decision, ruling, or order, appeal to the Appellate Court of Indiana for errors

> of law under the same terms and conditions as govern appeals in ordinary civil actions, except as otherwise herein provided, and with the right in the losing party or parties in the Appellate Court to apply to the Supreme Court for a petition to transfer the cause to said Supreme Court as in other cases. • • •"

The anomaly in the present case is that, while the IHB was denied its right to a review of questions of law involved, the Union was accorded a full review of such questions. Though the Appellate Court announced a limited scope of review, it went right ahead to determine the question asserted by the Union in support of the assignment of cross-errors, i.e., whether trackage located outside the State of Indiana should be counted for purposes of the law. Indeed, fully one-half of the court's opinion, except for recitations of findings of the Commission, dealt with the question of law raised by the Union, which was not even necessary to an affirmance of the Commission's decision. Yet the IHB, in this same case, was denied a review of any kind on the one question of law which *was* vital to the outcome of the case.

The present claim of denial of equal protection does not fall within that category of cases which can be explained away by this Court's oft-repeated proposition that the Equal Protection Clause does not "assure uniformity of judicial decisions or immunity from judicial error." *Beck v. Washington,* 369 U.S. 541 (1962). Instead, this is a case where the Appellate Court denied to one party a right accorded to the opposite side where both were equally entitled to that right. Moreover, that denial was fatal to the ultimate disposition of the case on petition to transfer to the Indiana Supreme Court. As a practical matter, because the Indiana Supreme Court does not search the record to determine if all substantial questions have

been decided in writing, a petition to transfer can be obtained only on questions of law.

> "(B) *Transfers.* A petition to transfer a cause from the Appellate Court to the Supreme Court shall be separate from the briefs in support thereof and shall be filed within twenty [20] days after denial of the petition for rehearing. The petition shall set forth briefly:
>
> "• • •
>
> "(4) that the opinion of the Appellate Court
>
> "(a) contravenes a ruling precedent of the Supreme Court, indicating the ruling precedent, or
>
> "(b) erroneously decides a new question of law, concisely stating the same, or
>
> "(c) fails to give a statement in writing of each substantial question arising on the record and the decision of the court thereon. If this cause is relied on, the petition shall set out or exhibit so much of the record, assignment of errors, briefs and opinion as will affirmatively disclose such failure and establish that the petitioner was prejudiced thereby." Appellate Rule 11, Ind. R. Civ. P.

Therefore, by its patently erroneous assertion that the only issue in the case was whether the Commission's decision was supported by substantial evidence, the Appellate Court prevented the case from being considered for transfer on the questions of law.

2. There is presently a great need for this Court to articulate the rights of review of persons and companies faced with the imposition of a legal obligation by an administrative agency.

It would be virtually impossible to overestimate the importance of the question which the IHB seeks to have decided herein. While Professor Davis has drawn the conclusion from all of the cases decided by this Court that

there is a constitutional right to review of (a) questions of law, (b) substantial evidence to support the agency's determination, and (c) procedural questions, at no point has this Court specifically announced that proposition. In fact, prior to recent years such a proposition might have been premature. During recent years there has necessarily been an enormous growth in the extent to which the day-by-day living is affected by administrative agencies. The recent adoption of wage and price regulation in the United States is but a single example of the role which administrative agencies are presently playing. Certainly there is no reason to believe that this role of administrative agencies will not expand in an increasingly complex society with a growing population. In recent years this Court has seen the need to delineate the rights of individuals accused of crimes so that the safeguards will remain inviolate. It therefore seems appropriate that this Court should now delineate for both individuals and corporations the basic rights to review for those whose future will be affected by determinations of questions of law by an administrative agency.

CONCLUSION

For the reasons stated, this Petition for a Writ of Certiorari to the Appellate Court of Indiana should be granted.

Respectfully submitted,

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APPENDIX A

Decision by Public Service Commission of Indiana
December 12, 1971

[Caption Omitted]

"BY THE COMMISSION:

"On July 28, 1967, George B. Lee, as Chairman of the Indiana Legislative and Education Board of the Brotherhood of Locomotive Firemen and Enginemen filed his Petition against the Indiana Harbor Belt Railroad Company and the New York Central Railroad Company. The Petition in Count I alleges that the Indiana Harbor Belt Railroad Company (hereinafter called the IHB) is a railroad common carrier which operates in the state of Indiana and is subject to the provisions of the Indiana Full Crew Law, being Chapter 58 of the Acts of 1937, Burns' Indiana Statutes §§ 55-1326 et seq., and that since May 4, 1964, IHB has operated its trains in the state without assigning a fireman to each crew as required by the Full Crew Law. The Petition asks for a determination that the IHB is operating in violation of the Indiana Full Crew Law, and directing the IHB to cease and desist from such practice and further transmitting such finding and order to the Attorney General of Indiana for institution of appropriate proceedings for enforcement of such law with respect to the IHB.

"Count II of the Petition alleges that the operations of the IHB in Indiana are an integral part of the railroad system operated by the Respondent New York Central, which is now the Penn Central Company by virtue of a merger between the New York Central and Pennsylvania Railroads and consequent change in name, and requesting a similar order with respect to the New York Central regarding its operation of trains in Indiana for and on behalf of the IHB, or over tracks of the IHB. The parties have stipulated that Count II need not be consid-

ered by the Commission pending disposition of Count I of the Petition.

"On September 15, 1967, the IHB and the New York Central filed answers to the complaint. The IHB alleges that it is exempt from the provisions of the Indiana Full Crew Law because it does not have main line track exceeding 25 miles in length within the meaning of such law. The IHB alleges that only lines of track which it owns or leases, and not lines over which it operates trains pursuant to trackage rights agreement, should be counted in computing the length of the main line track; that certain tracks of the IHB should be characterized as side tracks, switching tracks, industrial tracks, or tracks located on branch or lateral lines and do not constitute part of its main line track; that the length of its main line track should be computed by the distance between any two termini, disregarding parallel tracks between the same termini; and further that only track located in the state of Indiana may be considered in determining the length of its main line track for purposes of the Full Crew Law. The IHB concludes that as so computed its main line track does not exceed 25 miles in length and it is therefore exempt from the provisions of the Indiana Full Crew Law.

"Section 1 (a) of the Indiana Full Crew Law, Burns' Indiana Statutes § 55-1826, defines carriers subject to the law as follows: 'The term "carrier" shall mean a common carrier by railroad, and any receiver or any other individual or body, judicial or otherwise, when in possession of the business of a carrier or carriers covered by this act, excluding street, suburban and interurban electric railways, unless operated as a part of a general railroad system of transportation, and excluding common carriers by railroad whose main line track is 25 miles or less in length.'

"After the parties herein had filed various stipulations of fact, briefs and reply briefs upon the legal questions involved and application of the

statutory definition to the IHB, a hearing was held on the Petition at 10:00 a.m. on October 8, 1969. The evidence presented at such hearing consisted of (a) joint exhibits in the form of stipulations and documentary exhibits previously filed with the Commission, and hereinafter described (b) a joint exhibit in the form of a stipulation stating that the Supervisor of Personnel and Contracts of the IHB, if present at the hearing, would submit testimony with respect to the carriers having operating rights over various segments of track over which the IHB operates, including segments owned or leased by the IHB and over which the IHB operates under trackage rights agreements, and (c) respondent's exhibit in the form of IHB freight tariff 425-s with list of industries, mileage, stations, team tracks, track scales and connecting lines, dated June 25, 1964.

"At the hearing Petitioner's counsel stated that Petitioner is now requesting only that the Commission enter an appropriate order determining that the IHB is subject to the Indiana Full Crew Law and directing it to cease and desist from its failure to comply with such law by assigning firemen to all runs over the various segments listed in Exhibit A attached to the Petition, and that Petitioner is not now requesting that the Commission certify its finding and order to the Attorney General for the institution of further proceedings under the Full Crew Law.

"In the first stipulation of facts and issues filed by the parties on July 30, 1968, certain facts are set forth regarding the history, corporate organization, ownership, management and employees of the IHB. The stipulation further states that the IHB's function is to provide switching service for the heavy industrial area it serves, transfer service of traffic between other carriers, and yard terminal switching. This stipulation also sets forth the total trackage of the IHB in both Indiana and Illinois, broken down according to mileage of tracks owned,

mileage of tracks operated under lease, and mileage of tracks operated under trackage rights. The stipulation also sets forth the mileage of each segment in both Indiana and Illinois, listed in Exhibit A attached to the Petition, and computed both with and without counting separately the length of parallel tracks between the same termini. This stipulation further defines four legal issues presented by the statutory 'definition of carrier' and which the parties state should be considered by the Commission in determining whether the IHB is subject to the Indiana Full Crew Law. These four legal issues are defined as follows:

"1. Can a segment of road over which a carrier only has trackage rights be considered a part of a carrier's main line?

"2. Of what type of lines is the main line of any carrier composed?

"3. Are the lengths of all parallel tracks constructed on the same segment of a carrier's main line to be added together in arriving at the length of a carrier's main line track?

"4. Is the length of a carrier's main line track located outside the state of Indiana to be considered in determining whether a carrier should comply with the Indiana Full Crew Law on its operations within the state of Indiana?"

"The stipulation sets forth the differing contentions of the parties with respect to the resolution of these legal issues, and further sets forth various factors which the parties contend should be taken into consideration in determining what constitutes the 'main line' in the event that the statutory terminology does not contemplate consideration of all lines upon which a carrier operates through and between stations, as shown by its timetable.

"On December 3, 1968 the parties filed a further stipulation regarding admission of exhibits and documents, and attached copies of documents which

might be considered by the Commission for the purpose of resolving the issues presented. These documents, which have been identified as joint exhibits, are as follows:

"1. Joint Exhibit A: IHB Timetable No. 5, dated May 30, 1965, identical to the timetable referred to in the Petition.

"2. Joint Exhibit B: IHB Timetable No. 1, dated April 28, 1968, constituting the timetable in effect at the date of filing such stipulation.

"3. Joint Exhibit C: Map of Chicago and Calumet District showing Indiana Harbor Belt Railroad and connecting railroads, dated January, 1958.

"4. Joint Exhibit D: Summary of trackage rights agreements between the IHB and various other railroads relating to segments over which the IHB operates trains under trackage rights agreements.

"5. Joint Exhibit E: Sample trackage rights agreement dated September 30, 1913, between Michigan Central Railroad Company and the IHB, which the parties stipulate may be considered for purposes of determining the relationship between the parties to such agreement (this latter exhibit was filed with the Commission on January 2, 1969).

"On March 28, 1969 the parties filed a third stipulation setting forth facts which the parties considered to be relevant for purposes of analysis of the various factors set forth in the first stipulation to be considered in making a determination as to segments of the IHB which should be included as part of its 'main line track', in the event all such segments operating between stations are not to be so included. This stipulation includes facts and statistics with respect to each separate segment of the railroad showing, among other things, intraline or local traffic originating and terminating on the segment, loaded and empty cars received or delivered at each interchange point on each segment during a

nine-month period in 1967, a description of the method determining rates and charges for various types of service performed by the IHB, identification of the segments over which most of the transfer traffic of the railroad passes, assessment of the IHB operating department concerning the relative importance of the various segments to the overall operations of the IHB, number of crew assignments customarily operating over each segment, average train movements per day and average cars per train movement over each segment, number of 'stations' located along each segment, including terminal points, and 1967 statistics showing revenue, average revenue per industry, average cars per industry, number of industries served, puller service and transfer traffic volume and revenue for each segment. Such stipulation also included an appendix summarizing the statistical information for each segment, including total revenue and total cars moved in 1967.

"The Commission, having studied the pleadings, stipulations, documents and exhibits and the briefs of the parties with respect to the question of applicability of the Indiana Full Crew Law to the Indiana Harbor Belt Railroad, and having heard oral arguments of counsel and being duly advised in the premises, now finds:

"1. That the Petitioner, George B. Lee, is director of the Indiana Legislative Board of The United Transportation Union, successor to the Indiana Legislative and Education Board of the Brotherhood of Locomotive Firemen and Enginemen.

"2. That IHB is an Indiana Railroad corporation organized under the General Railroad laws of the State of Indiana and is subject to the jurisdiction and control of the Indiana Public Service Commission with respect to intrastate commerce.

"3. That since May 4, 1964, the IHB has operated its trains with only 13 specified firemen's assignments. Other firemen having more than 10

years' seniority have continued in the employ of the IHB since 1964, but they will not be replaced when they are retired by normal attrition. The actions taken by IHB in reducing its number of firemen were pursuant to Public Law 88-108 enacted by Congress and Arbitration Award No. 282 made pursuant thereto. In implementing the provisions of Award No. 282, the IHB was acting under its claim that it was not subject to the provisions of the Indiana Full Crew Law and thus was able to implement the provisions of Arbitration Award No. 282. Exhibit 1, pp. 3 and 4.

"4. That the complaint filed before the Commission by the Petitioner seeks a determination that the Indiana Full Crew Law is applicable to the operations of the IHB.

"5. That IHB conducts railroad operations in both Indiana and Illinois. The easternmost point served by the IHB is a point 2.44 miles west of County Line Road near Millers, Indiana. The westernmost point served by the IHB is Franklin Park, Illinois. All of its operations are local or switching in character. The trains operated by the IHB rarely attain speeds in excess of 30 miles per hour. Exhibit 1, pp. 4 and 5. Most of the segments over which the IHB operates its trains have speed restrictions of 30 miles per hour or less. Exhibits A and B.

"6. That IHB's function is to provide switching service to the industrial area in and around Chicago, Illinois, and Lake County, Indiana, and to transfer cars between other railroad carriers intersecting the segments over which the IHB operates. Exhibit 1, p. 4. The IHB has been able to accomplish this function by formation of an east-west artery or trunk between Franklin Park, Illinois, to Gibson, Indiana, by acquiring trackage rights over segments which it does not own or lease. See Exhibit D. This east-west artery or trunk is intersected by several lines which serve to carry traffic to and from industries and a few railroad carriers not

located on the east-west artery or trunk. In some instances the IHB only has trackage rights to operate over these lines, while other of these lines are owned or leased. See Exhibit C, and Exhibit 1, pp. 6, 14, and 15.

"7. That the Indiana Full Crew Law was enacted to apply to railroad operations within the State of Indiana. Operations conducted over any part of a railroad located outside the State of Indiana are not subject to the Commission. For purposes of the application of the Indiana Full Crew Law, main line track of the Indiana Harbor Belt Railroad located outside the State of Indiana should not be counted in determining the length of the railroads main line track.

"8. That segments of track over which the IHB operates trains through and between stations over tracks owned by other railroads, pursuant to trackage rights agreements of the type set forth in Joint Exhibit E, should be counted equally with segments of track over which the IHB operates trains through and between stations and which are either owned or leased by the IHB, for purposes of determining the applicability to the IHB of the Indiana Full Crew Law.

"9. That based upon Finding 8, supra, it is not necessary to count separate parallel tracks located between the same termini in order to determine the length of the main line track of the IHB Railroad in the State of Indiana.

"10. The Commission further finds that to determine the length of main line track of the IHB in Indiana it is necessary to count the segments of track either owned, leased, or used pursuant to trackage rights agreements between the IHB and other railroads.

"11. The Commission finds that the total mileage of main line track owned, leased, and used under trackage rights by the Indiana Harbor Belt Railroad in Indiana is 41.91 miles. See Joint Ex-

hibit No. 1, Page 5, Stipulation 8, Para. A, 'Type of Tracks: First Main, Owned: 9.60 miles, Leased: 8.51 miles, Trackage Rights: 23.80 miles'.

"12. The Commission therefore finds that the Indiana Harbor Belt Railroad is a common carrier railroad whose main line track is more than 25 miles in length and is subject to the Full Crew Law of Indiana, being Burns Indiana Statutes Annotated §§ 55-1326—55-1338.

"IT IS THEREFORE ORDERED BY THE PUBLIC SERVICE COMMISSION OF INDIANA that the Indiana Harbor Belt Railroad is required to comply with the provisions of the Indiana Full Crew Law and is ordered to provide such employees to each train crew as required by the law.

"IT IS FURTHER ORDERED that this order shall be effective on and after the date of its approval.

"IT IS FURTHER ORDERED that the Respondents shall pay at this time into the Treasury of the State of Indiana, through the Secretary of this Commission, the following itemized charges in the sum of $68.81, as well as any additional costs which were or may be incurred in connection with this cause.

"Reporting Services	$33.12
"Legal Advertising	35.69
"Total Charges	$68.81

"RYAN, CLANCY AND STEIN concur:

Approved: December 12, 1969"

APPENDIX B

Opinion of Appellate Court of Indiana
October 29, 1970

IN THE
APPELLATE COURT OF INDIANA
EN BANC

No. 1269 A 241

INDIANA HARBOR BELT RAILROAD COMPANY, and THE NEW YORK CENTRAL RAILROAD COMPANY (now Penn Central Transportation Company),

Appellants,

v.

PUBLIC SERVICE COMMISSION OF INDIANA, JOHN L. RYAN, C. PATRICK CLANCY, and RICHARD P. STEIN, as Members thereof; and GEORGE B. LEE, as Chairman of Indiana Legislative and Education Board of the Brotherhood of Locomotive Firemen and Enginemen, now Director of the Indiana Legislative Board of the United Transportation Union,

Appellees.

APPEAL FROM THE PUBLIC SERVICE COMMISSION OF INDIANA

SHARP, J.

This appeal arises from an order of the Public Service Commission of Indiana, hereinafter called Commission, in favor of Appellee George B. Lee as Representative of the Railroad Firemen's Union who had filed a complaint with said Commission asserting that the Appellant Indiana Harbor Belt Railroad Company, hereinafter called IHB, was operating its tracks in violation of the Indiana Full Crew Law, Acts 1937, ch. 58, which is found in Burns' Indiana Statutes Annotated, § 55-1326 through § 55-1338.

The only real issue before this court is whether the decision of the Commission is supported by substantial evidence of probative value. The critical finding of said Commission was that IHB had more than 25 miles of mainline track within the meaning of the Indiana Full Crew Law. The pertinent section of the Indiana Full Crew Law is found in Burns' Indiana Statutes Annotated, § 55-1326, which reads in part as follows:

> "(a) When used in this act and for the purpose of this act (§§ 55-1326—55-1338): The term 'carrier' shall mean a common carrier by railroad, and any receiver of [or] any other individual body, judicial or otherwise, when in possession of the business of a carrier or carriers covered by this act (§§ 55-1326—55-1338), excluding street, suburban and interurban electric railways, unless operated as a part of a general railroad system of transportation, *and excluding common carriers by railroad whose main line track is twenty-five (25) miles or less in length.*" (our emphasis)

The pertinent findings in the order of the Commission are as follows:

> "3. That since May 4, 1964, the IHB has operated its trains with only 13 specified firemen's assignments. Other firemen having more than 10 years' seniority have continued in the employ of the IHB since 1964, but they will not be replaced when they are retired by normal attrition. . .
>
> 4. That the complaint filed before the Commission by the Petitioner seeks a determination that the Indiana Full Crew Law is applicable to the operations of the IHB.
>
> * * * * * * * * *
>
> 7. That the Indiana Full Crew Law was enacted to apply to railroad operations within the State of Indiana. Operations conducted over any part of a railroad located outside the State of Indiana are not

subject to the Commission. For purposes of the application of the Indiana Full Crew Law, main line track of the Indiana Harbor Belt Railroad located outside the State of Indiana should not be counted in determining the length of the railroads main line track.

8. That segments of track over which the IHB operates trains through and between stations over tracks owned by other railroads, pursuant to trackage rights agreements of the type set forth in Joint Exhibit E, should be counted equally with segments of track over which the IHB operates trains through and between stations and which are either owned or leased by the IHB, for purposes of determining the applicability to the IHB of the Indiana Full Crew Law.

9. That based upon Finding 8, supra, it is not necessary to count separate parallel tracks located between the same termini in order to determine the length of the main line track of the IHB Railroad in the State of Indiana.

10. The Commission further finds that to determine the length of main line track of the IHB in Indiana it is necessary to count the segments of track either owned, leased, or used pursuant to trackage rights agreements between the IHB and other railroads.

11. The Commission finds that the total mileage of main line track owned, leased, and used under trackage rights by the Indiana Harbor Belt Railroad in Indiana is 41.91 miles. See Joint Exhibit No. 1, Page 5, Stipulation 8, Para. A 'Type of Tracks: First Main, Owned: 9.60 miles, Leased: 8.51 miles, Trackage Rights: 23.80 miles.'

12. The Commission therefore finds that the Indiana Harbor Belt Railroad is a common carrier railroad whose main line track is more than 25 miles in length and is subject to the Full Crew Law of Indiana, being Burns Indiana Statutes Annotated, §§ 55-1326 to 55-1338."

The operations and Indiana trackage here stipulated to by the IHB and said George B. Lee are as follows:

"7. *Operations.* All of the IHB's operations are local or switching in character. The IHB's function is to provide switching service for the heaving industrial area it serves, transfer service on traffic between other carriers, and yard terminal switching. It employs regular yard-switcher type locomotives and cabooses and switches standard rolling stock. One hundred forty-eight industrial customers are served in Indiana—principal are: American Can Company, American Maize Products Company, Cities Service Company, E. I. DuPont de Nemours & Co., Inc., Inland Steel Company, Lever Brothers Company, Linde Company, Pullman Standard Company, Sinclair Refining Company, Standard Forgings Company, Standard Oil Company, Swift & Company, Vulcan Detinning Company, and Youngstown Sheet & Tube Company. Its basic method of operation is as follows: handle traffic to and from customers located on the IHB; handle traffic to and from patrons for carriers interchanging business to and from IHB; perform intermediate transfer service between railroad carriers, principally western and eastern carriers; and classify the above-mentioned traffic in the IHB yard at various locations. The IHB operates no passenger trains. Its freight trains sometimes include trains of 70 cars or more. The easternmost point served by the IHB is a point 2.44 miles west of County Line Road in Indiana. The westernmost point served by the HIB is Franklin Park, Illinois.

8. *Indiana Trackage.*

A. The 1966 report filed by IHB with the Public Service Commission of Indiana with respect to Indiana trackage was as follows:

Tracks owned	41.00 miles
Tracks operated under lease	44.76 miles

Trackage operated under trackage rights (also described as rolling stock over foreign lines) 148.32 miles

A further breakdown of such trackage for 1966 similar to that contained in the 1961 report filed by the IHB with the Commission is as follows:

TYPE OF TRACKS	OWNED (miles)	LEASED (miles)	TRACKAGE RIGHTS (miles)
First Main	9.60	8.51	23.80
Second Main	—0—	—0—	14.05
All Other Main Tracks	—0—	—0—	—0—
Passing Tracks, Cross-Overs and Turnouts	23.53	18.83	105.99
Switching Tracks	10.87	17.42	4.48
TOTAL	41.00	44.76	148.32

The mileage of 'First Main' and 'Second Main' in Indiana listed above includes the total mileage of 'First Main' and 'Second Main' tracks over which the IHB operates or has the right to operate in Indiana regardless of whether the lines upon which they are located are designated or characterized as main lines, branch lines, lateral lines, connecting lines and stub lines serving a limited number of industries.

B. It is hereby stipulated and agreed that certain tracks, such as switching tracks, side tracks, passing tracks, cross-over tracks and turnabouts cannot constitute a part of the IHB's main line track in Indiana within the meaning of the Indiana Full Crew Law. Therefore, the parties agree that in resolving any question of which lines of the IHB in Indiana and the length thereof are to be considered in computing the length of the IHB's main line track, this Commission's consideration should be limited to the following segments of road which are owned, leased or over which the IHB has trackage rights:

1. Segments of Road in Indiana Owned by IHB

Grassell to State Line
Grassell to Ogden
Wanting to State Line
Illinois State Line

2. Segments of Road in Indiana Leased by IHB

Ivanhoe to a point 2.44 miles west of Cherry Line Road

3. Segments of Road in Indiana Over Which the IHB has Trackage Rights

Indiana Harbor to a point 4,000 feet south of Osborn
Ivanhoe to State Line via Gibson Yards
State Line Illinois State Line Burnham to Enos

Cross-appeals have been filed which raised the question as to whether or not the Commission can look to trackage of IHB outside the State of Indiana in deciding whether IHB has more than 10 miles of mainline track.

The guide for judicial review in this case was well stated by Judge Hunter in Public Service Commission of Indiana v. C.I.T. & L. R.R. Co., 230 Ind. 394, 404, 104 N.E.2d 91, 96 (1952) as follows:

> The purpose of a judicial review of an administrative order by the court is not to decide the matter on the merits for the administrative body but rather solely to determine whether or not the order made by the administrative body was outside the limits and jurisdiction of such body. Once the matter of jurisdiction is determined the court has no further right to interfere with an administrative proceeding which belongs to another department of the govern-

ment—not the judiciary. As a court, we have no right to substitute our judgment on the merits of an issue before an administrative body acting within its jurisdiction."

Our Supreme Court has also upheld the Indiana Full Crew Law in Public Service Commission of Indiana v. New York Central Railroad Co., 247 Ind. 411, 216 N.E.2d 716 (1966). In that our Supreme Court stated at 247 Ind. page 420:

"In arriving at a determination of the issues involved in the case at bar we take cognizance of, and accept at face value, the appellees statements that they have made great technological advancements and that the evidence revealed that these operating changes in railroading were occurring in Indiana all during the period between 1937 and the date suit was filed in the instant case and that these changes are still occurring. We point out however that these technological advances and the changes made and being made occurred and are occurring by reason of necessity, to meet competition, and we observe that on the whole they have not resulted in any appreciable available increase in service to the public. In some areas and in many ways available services have declined in both quality and quantity, or have been entirely eliminated. In any event the alleged improvements in technology and operating changes cannot here be used to justify a reduction in appellees work force. Such relief, if justified, is properly found in the legislature and not the courts."

The intent of the Legislature in the Full Crew Law as expressed in the title to Acts 1937, ch. 38, states in part:

"An act to promote the safety of employees of and travelers upon railroads by requiring common carriers by railroad to man locomotives, trains, and other self-propelled engines or machines with competent employees; to provide the least number of men that may be employed in the operation of loco-

motives, trains, and other self-propelled engines or machines; . . ."

It is readily apparent from the plain language of the statute itself that the Legislature clearly intended the Indiana Full Crew Law as a safety measure. This is in accord with Missouri P.R. Co. v. Norwood, 283 U.S. 249 (1911) and Brotherhood v. Chicago, R.I. & P. R.R. Co., 393 U.S. 129 (1968).

Railroad safety statutes generally must be given a liberal construction to effectuate their purposes as safety measures. U.S. v. Seaboard Air Line R.R. Co., 361 U.S. 78 (1959).

Burns' Indiana Statutes Annotated, § 55-1331 manifests the specific legislative intent that the Full Crew Law should apply to switching operations.

In this case the Commission obviously possesses the factual expertise in regard to the railroad operations in question. This court will readily admit the total lack of such expertise and indeed the scope of review as stated by Judge Arterburn in the Public Service Commission of Indiana v. C.I. & L. R.R. Co., supra, does not contemplate such expertise by this court. All factual inferences are in favor of the decision of the Commission in this regard. The Commission considered the method of operation of IHB as primarily a switching operation and applied the term "main line track" to such operations. It was quite proper for the Commission to look to IHB main line trackage and measure distances between terminals in finding it. It is also quite proper for the Commission to find, in effect, that what is main track by statutory definition § 55-1326(m) is also main line track when viewed in the context of the specialized operations of IHB.

Appellant IHB also argues that the Commission could not count trackage for which IHB had only a trackage

agreement and not a deed or lease. In support of their argument they place particular emphasis on the word "whose" as found in Burns' Indiana Statutes Annotated, § 55-1326(a). It must be emphasized that the entire thrust of the Indiana Full Crew Law is directed to activity and not property. It is a safety statute which is activity oriented. The trackage right agreements of IHB constitutes entitlement to perform activity which comes within the scope of the Indiana Full Crew Law. In oral argument counsel for IHB conceded that a leased track could qualify as main line track under Indiana's Full Crew Law. By the same token the tracks subject to trackage agreement would qualify as main line track.

The Commission did not count out-of-state track mileage in determining whether IHB must comply with the Indiana Full Crew Law. In this it was correct. In fact, it would have been erroneous for the Commission to have counted out-of-state track for this purpose. We realize that there is a division of authority on this question. The Supreme Court of Arkansas in Kansas City Southern Railroad Co. v. State, 116 Ark. 455, 174 S.W. 223 (1915), decided that under the applicable Arkansas Full Crew Law that connecting mileage of track in an adjoining state should be counted. However, the Supreme Court of Oregon in Union Pacific Railroad Co. v. Anderson, 167 Ore. 687, 120 Pac. 2d 578 (1941) held to the contrary and stated:

> "The purpose of the act, as indicated by its title, is to protect the safety of employes and passengers on railroads, and presumptively at least the legislature was thinking about the dangers incident to railroad operations in this and not in adjoining states. We do not take the view urged on us by the plaintiff that here would arise grave doubt of the constitutionality of the law if it were construed as the defendants would have us construe it. It would not for that reason, we think, become extraterri-

torial legislation. The legislature might constitutionally identify railroads to be regulated in this state by reference to lines of railroad outside this state, and it would not thereby be guilty of extra-territorial legislation. But this is not what the legislature did, and therein lies the difference between this case and the case mainly relied on by the defendants—namely, Kansas City Southern Railway Co. v. State, 116 Ark. 455, 174 S.W. 224. There the statute—also a full crew law—provided that the act should 'not apply to any railroad company * * * operating any line of railroads, whose line or lines are less than 50 miles in length', and the court, construing the statute, held that the classification included mileage outside as well as within the state. This was the natural interpretation of the words of the act. *The statute describes the type of railroad to which it was to apply, and no one could reasonably say that the description does not fit a railroad with fifty or more miles of line, whether or not a portion of that mileage is outside the state.* But here the act makes it 'unlawful for any * * * corporation * * * to operate over its road or any part thereof in excess of fifteen continuous miles * * * any freight train consisting of forty or more cars,' etc. with less than a full crew. *The statute is not made applicable to railroads having in excess of fifteen continuous miles of lines, but in direct terms regulates the operation, which necessarily must be the operation within the state of Oregon.*" (emphasis added)

We believe that the reasoning and result achieved by the Supreme Court of Oregon is preferable. However, it is not necessary to rely solely on the decision of the Supreme Court of Oregon in deciding this question. The plain language of the Indiana Full Crew Law is limited to operations within the State of Indiana. For example, Acts 1937, Ch. 58, § 8, as found in Burns' Indiana Statutes Annotated, § 55-1333, provides:

> "Crews — Self-propelled engine or machine on main track.—It shall be unlawful for any carrier to operate as a locomotive or permit to be operated as a locomotive, on its main track, *in the state of Indiana,* any self-propelled engine or machine not used for the transportation of passengers and/or freight or property for hire, which has sufficient power to draw or propel itself and one [1] or standard railroad cars, unless such engine or machine shall be manned by a crew of competent employees consisting of not less than one [1] engineer, one [1] conductor and one [1] flagman. [Acts 1937, ch. 58, § 8, p. 306.] (our emphasis)

Likewise, § 11 of the same act as found in Burns' Indiana Statutes Annotated, § 55-1336, provides:

> "Penalty for violation — Attorney-general — Duties.—Any carrier operating *in the state of Indiana,* who shall wilfully violate any of the provisions of this act [§§ 55-1326—55-1338], shall be liable to the state of Indiana for a penalty of not less than one hundred dollars [$100], nor more than five hundred dollars [$500], for each offense, and such penalty shall be recovered, and suits therefor brought by the attorney-general, or under his direction, in the name of the state of Indiana, on relation of the public service commission of Indiana, in the circuit or superior court of any county through which such railroad may be run or operated. [Acts 1937, ch. 58, § 11, p. 306.] (our emphasis)

This statute must be read and construed as a whole in order to effectuate its purpose. At one point or another all the parties to this case have argued that the Full Crew Law is a safety measure and we agree. Because the safety of Indiana citizens is the only justifiable basis for compliance with the Full Crew Law any operation of trains outside the boundaries of this State are beyond the power of the Indiana General Assembly to legislate upon and are beyond the regulatory jurisdiction of the Public Service

Commission of Indiana. A statute is prima facie operative only as to persons or things within the territorial jurisdiction of the lawmaking power which enacted it. See 50 Am. Jur., Statutes, § 487 (1944 ed.). Our conclusion is bolstered by the decision of the Supreme Court of Oregon in the *Anderson* case but is not dependent upon it.

We, therefore, find no error in the decision of the Public Service Commission of Indiana. The same is therefore affirmed.

Lowdermilk, C. J., Hoffman, P.J., Carson, J., Lybrook, J., concur. Sullivan, J. dissents with opinion. White, J. and Pfaff, J. not participating.

SULLIVAN, J.

I respectfully dissent from the majority opinion. It relies heavily upon a rehearing opinion in *Public Service Commission* v. *C.I. & L. RR.* (1956), 235 Ind. 403, 134 N.E.2d 53. The opinion in the latter case upon the merits, however, contains the following statement at page 397:

> "The trial court[1] may not set aside an order of the Public Service Commission if it is supported by substantial evidence *and is not contrary to law.* * * *" (Emphasis supplied)

This statement of law must be considered in understanding the language used by Judge Arterburn in his rehearing opinion wherein he stated that the court has no right to substitute its judgment on the merits of an issue before the Public Service Commission which has acted within its jurisdiction. The *C.I.&L. RR.* case, *supra,* affirms a decision

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[1] Prior to enactment of the Acts of 1957, ch. 189, § 13, being Ind. Annotated Statutes § 54-448 (Burns' 1969 Supp.), appeals were permitted *de novo* to the circuit or superior courts of Marion County.

of the trial court upon the ground that since the appellant Public Service Commission did not present to the Supreme Court the evidence which was presented before the Commission or the evidence presented before the trial court, the Supreme Court had no opportunity to determine whether or not the Commission order was supported by substantial evidence or was contrary to law.

The reluctance of this court to recognize the distinction between "main tracks" and "main *line* tracks" is understandable because the distinction perhaps is difficult to isolate and articulate. Such reluctance, however, does not justify the court's failure to recognize it. The majority has said that it was appropriate for the Commission to equate the "main track" referred to in Ind. Annotated Statutes § 55-1326(m), (Burns' 1951 Repl.), with the "main line track" covered in the exclusionary provision under Ind. Annotated Statutes § 55-1326(a), (Burns' 1951 Repl.). Such equation is not so obvious to me as apparently it is to by brethren.

To the contrary, I would point out that a separate statutory provision, i.e., the Utility Tax Act of 1949, being Ind. Annotated Statutes § 64-1810(1), (Burns' 1961 Repl.), quite clearly recognizes that there is a difference between "main lines" and "main tracks". I cannot convince myself that the legislature at one point intended main lines and main tracks to be synonymous yet in another context to have separate and distinct meanings.

Further, while *Union Pacific R. Co.* v. *Anderson* (1941), 167 Ore. 687, 120 P. 2d 578, relied upon as principal authority by the majority here, does not consciously differentiate between "main line track" and "main track", it does, nevertheless dramatically emphasize that "main line" has a very fixed and distinctive meaning. By unshakeable inference, that case constitutes logical and rational authority which, in my view, requires this court to reject appellee's

contention that, as the Commission concluded, "main track" and "main line track" are synonymous. The Oregon Supreme Court there said:

> "The commonly understood meaning of the words 'main line' of a railroad is the principal line, and the branches are the feeder lines like the tributaries of a river. The court so stated in the Oregon, C. & E. case quoting dictionary definitions to that effect. It also quoted from 22 R.C.L. 744 the following: 'A "trunk railway" is a commercial railway connecting towns, cities, counties or other points within the state or in different states, which has the legal capacity, under its charter or the general law, of constructing, purchasing and operating branch lines or feeders connecting with its main stem or trunk, the main or trunk line bearing the same relation to its branches that the trunk of a tree bears to its branches, or the main stream of a river to its tributaries.'" 120 P. 2d 588.

As is made clear in the Oregon decision, such determination is not one of fact as the majority holds here, but is one of law. And it is, I believe, well-established as stated in 2 Am Jur 2d, Administrative Law, § 676 that:

> "An administrative determination of questions of law is not binding upon a reviewing court. Such a determination is subject to judicial review upon which the court may substitute its own judgment and exercise an independent judgment as to the correctness of the determination * * *"

It is our duty, therefore, to review the legal conclusion drawn, erroneously I believe, by the Commission. Finding No. 6 made by the Commission, not found in the majority's recitation, impliedly controverts the legal conclusion that "main line track" can be here held to include more than the main artery or main trunk trackage. Said Finding is as follows:

> "6 That IHB's function is to provide switching service to the industrial area in and around Chicago, Illinois, and Lake County, Indiana, and to transfer cars between other railroad carriers intersecting the segments over which the IHB operates. Exhibit 1, p. 4. The IHB has been able to accomplish this function by formation of an east-west artery or trunk between Franklin Park, Illinois, to Gibson, Indiana, by acquiring trackage rights over segments which it does not own or lease. See Exhibit D. This east-west artery or trunk is intersected by several lines which serve to carry traffic to and from industries and a few railroad carriers not located on the east-west artery or trunk. In some instances the IHB only has trackage rights to operate over these lines, while other of these lines are owned or leased. See Exhibit C, and Exhibit 1, pp. 6, 14 and 15."

As demonstrated by the Oregon case, supra, "main line track" is that track which forms the main artery or trunk of the railroad. The Indiana Public Service Commission in its Finding No. 6 found as a fact that the main artery[2] of the Indiana Harbor Belt Railroad runs from Franklin Park, Illinois to Gibson, Indiana. This track mileage within Indiana is admittedly less than the 41.91 miles of Indiana track which the Commission found to exist as "main line track" for purposes of the Full Crew Law.

As appellant itself admits, however, "in determining what does constitute that main trunk line or artery, a factual determination must be made". As held in *PSCI* v. *C.I.&L. R.R. Co., supra,* at page 403:

> "* * *. [A] reviewing court may remand a case to the administrative body for further proceedings in conformity with the law as defined by the judgment and decision of the court. [citations omitted]

[2] The findings are silent as to the existence, if any, of a north-south artery or trunk thereby indicating that no such north-south artery exists in the opinion of the Commission.

> "Remanding it to the administrative body gives it an opportunity to correct the irregularities in its proceedings as determined by the court. At the same time it avoids the court's encroachment upon its administrative functions. There is no more reason for assuming that the commission will disregard the law as fixed by this reviewing court than that a lower trial court will do so."

Upon remand the factual determination made by the Commission in its Finding No. 6 could well be deemed erroneous in the light of the guidelines set forth in the Oregon case, *supra*, and as proposed by this dissent.

In its Finding No. 9, the Commission found that "it is not necessary to count separate parallel tracks located between the same termini in order to determine the length of the main line track of the IHB Railroad in the State of Indiana". The parties in this regard had stipulated that, as to the main artery referred to in Finding No. 6, the length of trackage in Indiana exclusive of separate parallel tracks, between the Indiana-Illinois State Line and Ivanhoe, which lies east of Gibson, is 5.69 miles. The length of the main artery trackage, being that located between the State Line and Gibson, is therefore necessarily less than 5.69 miles. Further, it is not inconceivable that upon redetermination the Commission might find that a north-south main artery exists. The Commission, therefore, might well find the main artery or arteries of Indiana Harbor Belt Railroad to consist of more trackage or less trackage than exists between the Indiana-Illinois State Line and Gibson, Indiana. In this regard, I wholly agree with the majority that trackage of any description located outside the State of Indiana may not be considered in computing "main line tract" as that term is used in the Full Crew Law. If such factual determinations were made, however, within these guidelines, it would, as Judge Sharp's

opinion indicates, be binding upon us. Such determination would necessarily depend upon the nature and extent of operations upon the trackage considered.

For the foregoing reasons, I would reverse the decision of the Commission and remand the cause for rehearing and redetermination.

APPENDIX C

Petition for Rehearing Filed by Indiana Harbor Belt Railroad in the Appellate Court of Indiana, November 17, 1970

[Caption Omitted]

PETITION FOR REHEARING

The appellant Indiana Harbor Belt Railroad Company (IHB) respectfully but most urgently petitions this Court for a rehearing of this cause and strongly urges that the Court erred in its opinion and decision in the following respects:

1. In holding on page 2 of its opinion that the only real issue before this Court is whether the decision of the Public Service Commission of Indiana (Commission) is supported by substantial evidence of probative value, this Court failed to decide whether the decision was contrary to law in the respects claimed by IHB and has thus contravened the following ruling precedents of the Supreme Court of Indiana concerning the appropriate scope of judicial review of decisions rendered by administrative bodies. *Public Serv. Comm'n* v. *City of Indianapolis* (1956), 235 Ind. 70, 131 N.E.2d 308; and *Public Serv. Comm'n* v. *C. I. & L. Ry.* (1956), 235 Ind. 394, 132 N.E. 2d 698, 700. By failing to construe the term "main line track" contained in the Indiana Full Crew Law and to consider if the Commission utilized the appropriate legal standards in determining what constitutes the main line track of any railroad for purposes of the Indiana Full Crew Law, this Court has abandoned its judicial responsibility to insure that the decision of the Commission is not contrary to law.

2. In holding on page 7 of its opinion that the Court was bound by the expertise of the Commission in con-

struing the term "main line track" because it was sustained by sufficient evidence, this Court has contravened ruling precedents of the Supreme Court of Indiana. The construction of the statute is a judicial function, not a fact-finding function. An examination of the entire opinions in the case of *Public Serv. Comm'n* v. *C., I. & L. Ry.* (1956), 235 Ind. 394, 132 N.E.2d 698, *petition for rehearing denied*, 235 Ind. 394, 134 N.E.2d 53, which is relied upon by the Court for the proposition that the Court cannot substitute its judgment on the merits for that of the Commission clearly holds that this Court must set aside a Commission order if it is *contrary to law* and is required to review questions of law to insure that the decision does not violate legal principles:

> "The trial court may not set aside an order of the Public Service Commission if it is supported by substantial evidence and is not contrary to law.
>
> * * *
>
> "* * *
>
> "* * * It is said to be contrary to law if any statute, constitutional provision, legal principle, or rule of substantive or procedural law has been violated in the composition of the final administrative order." 132 N.E.2d at 700.

3. In holding that the decision of the Commission was supported by substantial evidence of probative value when there exists a direct conflict between the ultimate fact found by the Commission that the main line track of the IHB in Indiana is 41.90 miles in length and the ultimate fact found that the main artery of the IHB in Indiana consists of a single segment from the Indiana-Illinois State Line to Gibson, the Court has contravened the ruling precedents of the Supreme Court of Indiana as to whether there is substantial evidence to support the decision of the Commission. *Powers* v. *Scotchfield* (1965),

137 Ind. App. 211, 205 N.E.2d 326; *Tribune-Star Publishing Co.* v. *Fortwendle* (1954), 124 Ind.App. 618, 621, 115 N.E.2d 215.

4. In holding on page 7 of its opinion that it was proper for the Commission to find, *in effect*, that what is main track as defined by statute is also main line track when viewed in the context of the specialized operations of IHB, this Court has contravened the following precedents of the Supreme Court of Indiana by disturbing the findings of the Commission and attempting to *add* a finding or speculate that the Commission found that the specialized operations of the IHB justified treating the IHB's main track as synonymous with its main line track. *International Petrola Corp.* v. *Hoffman* (1947), 244 Ind. 613, 70 N.E.2d 844; *Heflin* v. *Red Front Cash & Carry Stores, Inc.* (1947), 225 Ind. 517; 75 N.E.2d 662.

5. By limiting its judicial review to the question of whether the Commission's decision was supported by substantial evidence or probative value, the opinion and decision of this Court fails to construe the Indiana Full Crew Law and thus fails to give a statement in writing and the decision of the Court thereon as to what legal standards are to be applied in determining what constitutes main line track of any railroad for purposes of the Indiana Full Crew Law. There is a total void in the Court's opinion in this regard though the issue was specifically raised by IHB's Issue No. 1.

On page 7 of its opinion this Court held that in determining the total length of main line trackage of a railroad, the Commission was justified in measuring the distance between the terminals of segments constituting main line trackage, but the Court articulated no definitions or standards which either were used or should have been used in determining what segments constituted main line trackage. Similarly, though the Court found that the Commission

was justified in finding that from a factual basis the specialized operations of the IHB permitted treatment of the IHB's main track as main line track, this Court failed to indicate the standards which would permit equating the terms "main line track" and "main track." The entire opinion by this Court fails to provide any definition or standards by which the implied conclusion of the Commission can be reviewed.

The IHB has been irreparably prejudiced by the failure of this Court to state in writing and decide the question of the appropriate standards in determining what constitutes the main line track of any railroad, especially in view of the specific finding contained in Finding No. 6 of the Commission's order. That finding provides:

> "6. The IHB's function is to provide switching service to the industrial area in and around Chicago, Illinois, and Lake County, Indiana, and to transfer cars between other railroad carriers intersecting the segments over which the IHB operates. Exhibit 1, p. 4. *The IHB has been able to accomplish this function by formation of an east-west artery or trunk between Franklin Park, Illinois, to Gibson, Indiana, by acquiring trackage rights over segments which it does not own or lease.* See Exhibit D. *This east-west artery or trunk is intersected by several lines which serve to carry traffic to and from industries and a few railroad carriers not located on the east-west artery* or trunk. In some instances the IHB only has trackage rights to operate over these lines, while other of these lines are owned or leased. See Exhibit C, and Exhibit 1, pp. 6, 14 and 15." [Our emphasis.]

Throughout the entire course of these proceedings the IHB has consistently maintained that the term "main line track" has a fixed and distinct meaning, i.e., that portion of a railroad's trackage forming the main artery or trunk of the railroad. Since the Commission made a specific finding

concerning the IHB's main artery and the length of that artery in Indiana is far less than 25 miles in length, it is obvious that, if the main artery theory is an appropriate standard to be used, the Commission's decision is contrary to law. By failing to decide what standard should have been used by the Commission, this Court has failed to exercise its obligation of judicial review to see that a decision of the Commission is not contrary to law.

6. By limiting its judicial review to the question of whether the Commission's decision was supported by substantial evidence of probative value, the Court fails to construe the Indiana Full Crew Law and thus fails to give a statement in writing and the decision of the Court thereon as to whether, for purposes of the Full Crew Law, there is such a thing as a branch line, lateral line or connecting line.

Nowhere in this Court's opinion is there any discussion of this question which was raised by the IHB's Issue No. 3. Instead, the decision only states that the Commission was justified in treating all main tracks of the IHB as synonymous with main line track. Since the Commission found that the IHB had a main artery with branches feeding into that artery, the failure of this Court to specifically decide this question leaves the case in an impossible state of limbo. There is no way to know whether the Court and Commission have departed from what the IHB contends is the accepted meaning of main line track as articulated in the case of *Anderson* v. *Union Pac. Ry.* (1941), 167 Ore. 687, 120 P.2d 578, and is thus contrary to law, or whether the decision of the Commission is without substantial evidence to support it or because of the irreconcilable conflict between the ultimate facts as found by the Commission: Whichever is the case would require a reversal of the Commission decision. However, without such a clarification the IHB's right of judicial review has been effectively denied it.

7. The opinion of this Court erroneously decides a question of law not heretofore decided by any appellate tribunal in this state by construing the term "main line track" as used in the Indiana Full Crew Law as being synonymous with the term "main track" which is specifically defined in the Indiana Full Crew Law, despite the fact that the term "main line track" has a well-recognized and distinct meaning from the term "main track."

8. This Court erred in holding on page 7 that it was proper for the Commission to consider the fact that the IHB engaged in specialized switching operations to find, in effect, that what is main track by statutory definition is also main *line* track. There is no phase of railroad operations which is not regulated by the Indiana Full Crew Law if, in fact, a common carrier by railroad must comply with the law. However, the fact that any railroad engages in switching operations generally or exclusively is irrelevant in determining the appropriate construction of the term "main line track" for purposes of determining if a railroad falls within that class of railroads which must comply with the Indiana Full Crew Law.

WHEREFORE, appellant Indiana Harbor Belt Railroad Compa.. respectfully requests a rehearing by this Court, and after such rehearing that the decision of the Commission be reversed or remanded to the Commission in accordance with the dissenting opinion of Judge Sullivan of this Court.

/s/ KARL J. STIPHER
/s/ TERRILL D. ALBRIGHT
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APPENDIX D

Petition for Transfer to the Indiana Supreme Court Filed by Indiana Harbor Belt Railroad Company In the Supreme Court of Indiana, December 22, 1970

[Caption Omitted]

PETITION FOR TRANSFER

The appellant Indiana Harbor Belt Railroad Company (IHB) in the above entitled cause respectfully shows the Court as follows:

1. The decision of the Public Service Commission of Indiana herein was affirmed by the Appellate Court of Indiana en banc on October 29, 1970, and the Appellate Court decided the case with a written opinion on that date. Judge Patrick Sullivan dissented from the majority opinion in a separate written opinion on that same date.

2. The decision of the majority of the Appellate Court was against the appellant IHB, this petitioner.

3. The IHB filed its petition for rehearing with the Clerk of this Court on November 17, 1970, which was within 20 days from the rendition of the Appellate Court's decision.

4. The IHB's petition for rehearing was denied by the Appellate Court on December 2, 1970, which is not more than 20 days before the time of the filing of this petition.

5. The opinion of the Appellate Court contravenes and is inconsistent with a ruling precedent of the Supreme Court as stated in its opinions in the following cases: *Public Serv. Comm'n* v. *City of Indianapolis* (1956), 235 Ind. 70, 131 N.E.2d 308; and *Public Serv. Comm'n* v. *C., I. & L. Ry.* (1956), 235 Ind. 394, 132 N.E.2d 698, petition for rehearing denied 235 Ind. 394, 134 N.E.2d 53. The ruling precedent established by these cases is that in reviewing

decisions of an administrative body such as the Public Service Commission an appellate tribunal not only must determine whether the decision is supported by substantial evidence of probative value, but it must also determine whether such decision is contrary to law. A decision is said to be contrary to law "if any statute, constitutional provision, legal principle, or rule of substantive or procedural law has been violated in the composition of the final administrative order." *Public Serv. Comm'n* v. *C., I. & L. Ry., supra,* at 700. The opinion of the Appellate Court contravenes and is inconsistent with the foregoing ruling precedent in the following respects:

(a) In holding on page 2 of its opinion that the only real issue before it was whether the decision of the Public Service Commission was supported by substantial evidence of probative value, the Appellate Court failed to construe the term "main line track" contained in the Indiana Full Crew Law and to consider if the Commission utilized the appropriate legal standards in determining what constitutes the main line track of any railroad for purposes of the Indiana Full Crew Law, and thus failed to decide whether the Commission's decision is contrary to law.

(b) In holding on page 7 of its opinion that the Appellate Court was bound by the expertise of the Commission in construing the term "main line track" because the Commission's decision was sustained by sufficient evidence and that the Court could not substitute its judgment for that of the Commission, the Appellate Court failed to exercise its judicial function and obligation of construing the statute to insure that the decision did not violate legal principles so as to be contrary to law.

6. The opinion of the Appellate Court contravenes and is inconsistent with a ruling precedent of the Supreme

Court as stated in its opinions in the following cases: *International Detrola Corp.* v. *Hoffman* (1947), 224 Ind. 613, 70 N.E.2d 844, *Heflin* v. *Red Front Cash & Carry Stores, Inc.* (1947), 225 Ind. 517, 75 N.E.2d 662. The ruling precedent established by these cases is that an appellate tribunal, in reviewing decisions of an administrative body, may not disturb the findings of the administrative body, nor may it add to or speculate as to the findings of the administrative body. The opinion of the Appellate Court contravenes and is inconsistent with the foregoing ruling precedent when it recites on page 7 of its opinion that "It is also quite proper for the Commission to find, *in effect,* that what is *main track* by statutory definition § 55-1326(m) is also *main line track* when viewed in the context of the specialized operations of IHB" [our emphasis], since this holding attempts to add a finding or speculate concerning a finding which is not found in the order of the Public Service Commission.

7. The opinion of the Appellate Court contravenes and is inconsistent with a ruling precedent of the Supreme Court as stated in its opinion in the case of *Postal* v. *Postal* (1922), 192 Ind. 376, 136 N.E. 570. The ruling precedent established by this case is that there is not substantial evidence to support a decision where conflicting findings of fact occur in a decision. The opinion of the Appellate Court is erroneous and inconsistent with the foregoing ruling precedent when it holds that the decision of the Commission was supported by substantial evidence of probative value in view of the direct conflict between the fact found by the Commission that the main line track of the IHB in Indiana is 41.90 miles in length, consisting of first main on every segment of track in Indiana, and the fact found by the Commission that the IHB has a main artery, consisting of a single segment in Indiana which is less than 5.69 miles in length, and all other segments are branch lines, lateral lines and connecting lines.

8. The Appellate Court failed to give a statement in writing of at least two substantial questions arising on the record and the decision of the Court thereon as follows:

(a) Two of the issues presented for review which were specifically set forth in the IHB's brief were as follows:

> "1. Is the Commission's decision contrary to law since it holds that under the Indiana Full Crew Law every segment of track over which a railroad operates through and between stations listed in its timetable is a part of the railroad's main line track?
>
> "* * *
>
> "3. Is the Commission's decision contrary to law since it holds that for purposes of the Indiana Full Crew Law there is no such thing as a branch line, lateral line or connecting line?" IHB Brief, pp. 2-3.

(b) In IHB's brief under the argument section a subdivision discussing the law and applicable authorities is entitled:

> "In Determining That the Main Line Track of a Railroad Consists of All Segments of Track Over Which a Railroad Operates Through and Between Stations the Public Service Commission Erroneously Construed the Indiana Full Crew Law as Meaning That the Terms 'Main Track' and 'Main Line Track' Are Synonymous and Has Thus Erroneously Determined That for Purposes of the Indiana Full Crew Law No Railroad Can Have Branch Lines, Lateral Lines and Connecting Lines." IHB Brief, p. 36.

(c) The opinion of the Appellate Court on page 2 states only that "The only real issue before this court is whether the decision of the Commission is supported by substantial evidence of probative value."

(d) The opinion of the Appellate Court fails to state in writing that a question arises on the record concerning these alleged errors of the Commission in misconstruing the term "main line track" which resulted in the inclusion of the length of branch lines, lateral lines and connecting lines, and fails to give a decision in writing on these issues.

(e) There is merit in the issues thus presented since the Commission determined that the IHB had both a main artery and branch lines, lateral lines and connecting lines in its Finding No. 6:

> "6. The IHB's function is to provide switching service to the industrial area in and around Chicago, Illinois, and Lake County, Indiana, and to transfer cars between other railroad carriers intersecting the segments over which the IHB operates. Exhibit 1, p. 4. *The IHB has been able to accomplish this function by formation of an east-west artery or trunk between Franklin Park, Illinois, to Gibson, Indiana, by acquiring trackage rights over segments which it does not own or lease.* See Exhibit D. *This east-west artery or trunk is intersected by several feeder lines which serve to carry traffic to and from industries and a few railroad carriers not located on the east-west artery or trunk.* In some instances the IHB only has trackage rights to operate over the feeder lines, while other feeder lines are owned or leased. See Exhibit C and Exhibit 1, pp. 6, 14 and 15." [Our emphasis.] See also pages 4 and 5 of Judge Sullivan's dissenting opinion.

(f) By applying improper standards, *i.e.*, the inclusion of the length of all lines, not just those in Indiana comprising the main artery, in computing the length of the IHB's main line track, the length of the IHB's main line track was determined to be more than 25 miles. If only the length of the IHB's main artery is considered and not the length of its branch lines, lateral lines and

connecting lines, its length is far less than 25 miles and thus insufficient to require compliance with the Indiana Full Crew Law. The failure of the Appellate Court to state and decide in writing the issues presented by the IHB has resulted in prejudice to the IHB.

9. The opinion of the Appellate Court erroneously decided new questions of law regarding the construction of the term "main line track" as it is used in Burns' Ind. Stat. Ann. § 55-1326(a) of the Indiana Full Crew Law, which term has not heretofore been construed by any appellate tribunal of this state. The decision of the Appellate Court was erroneous in the following particulars:

(a) On page 7 of its opinion the Court affirmed the decision of the Commission, which, according to the Court, treated the term "main line track" as used in the Indiana Full Crew Law as being synonymous with the term "main track" which is defined in § 55-1326(m) of the Law, despite the fact that the term "main line track" has a well-recognized and distinct meaning which is different from the term "main track" as defined in the Indiana Full Crew Law.

(b) On page 7 of its opinion the Court erroneously held that it was proper for the Commission to consider the fact that the IHB engaged in switching operations (to which the Indiana Full Crew Law applies) in arriving at a construction of the term "main line track" because the Law applies to all forms of railroad operations, but only if its main line track exceeds 25 miles in length.

WHEREFORE, appellant Indiana Harbor Belt Railroad Company respectfully requests this Court to transfer this case to the Indiana Supreme Court, to vacate the decision of the Indiana Appellate Court, to reverse the decision of

the Public Service Commission, and to take all such other action as may be just and proper in the premises.

Respectfully submitted,

KARL J. STIPHER

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APPENDIX E

Petition for Rehearing on Denial of Petition To Transfer Filed in the Indiana Supreme Court by Indiana Harbor Belt Railroad Company, July 7, 1971

[Caption Omitted]

PETITION FOR REHEARING ON DENIAL OF APPELLANT'S PETITION FOR TRANSFER

The appellant Indiana Harbor Belt Railroad Company (IHB) respectfully petitions this Court for a rehearing on the IHB's petition to transfer on the grounds that the denial of transfer has operated to affirm the action of the Appellate Court which was erroneous in three basic respects:

1. The Appellate Court did not perform its basic judicial function and obligation because it failed to construe the term "main line track" contained in the Indiana Full Crew Law.

2. The Appellate Court failed to state in writing its decision concerning the construction of the term "main line track" as contained in the Indiana Full Crew Law as required by Article 7, Section 5, of the Indiana Constitution which by statute was extended to cases decided by the Appellate Court.

3. The Appellate Court erroneously decided (by implication) a new question of law when it determined that the term "main line track" as it is used in the Indiana Full Crew Law (though not defined therein) is synonymous with the term "main track" which is defined in the law.

WHEREFORE, appellant Indiana Harbor Belt Railroad Company respectfully requests this Court to grant its petition for rehearing on denial of transfer, to transfer this case to the Indiana Supreme Court, to vacate the

decision of the Indiana Appellate Court, and to take all such other action as may be just and proper in the premises.

KARL J. STIPHER

TERRILL D. ALBRIGHT

Attorneys for Appellant and Petitioner Indiana Harbor Belt Railroad Company

BAKER & DANIELS
Of Counsel

APPENDIX F.

Petition For Stay of Mandate and Effective Date of Decision Filed by Indiana Harbor Belt Railroad Company in the Supreme Court of Indiana, October 19, 1971

[Caption Omitted]

PETITION BY INDIANA HARBOR BELT RAILROAD COMPANY FOR STAY OF MANDATE AND EFFECTIVE DATE OF DECISION

The appellant, the Indiana Harbor Belt Railroad Company (hereinafter IHB), hereby petitions this Court for an order staying the mandate and proceedings on the decision and judgment of this Court denying transfer to this Court (thereby affirming the decision of the Appellate Court of Indiana) pending the filing of a Petition for Certiorari in the United States Supreme Court and that Court's consideration of and decision on that petition and, if certiorari is granted, pending issuance of the judgment of the United States Supreme Court. In support of its petition, the IHB respectfully shows the Court the following:

1. This is an appeal from an order of the Public Service Commission of Indiana which was affirmed on October 29, 1970, by the Indiana Appellate Court. On June 17, 1971, this Court denied the IHB's petition to transfer and on October 1, 1971, this Court denied IHB's petition for rehearing on this Court's order denying transfer. This Court continues to have jurisdiction over this appeal.

2. The IHB will file a Petition for Certiorari in the United States Supreme Court seeking a review of questions which are substantial questions in this case relating to the Due Process of Law and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States. Those questions are based upon the following facts and circumstances.

(A) The proceeding before the Public Service Commission of Indiana was submitted on a completely stipulated set of facts. The parties stipulated that there were four potential questions of law, i.e., legal issues to be resolved by the Public Service Commission.

(B) The Public Service Commission, in the IHB's belief, erroneously construed the term "main line track" contained in the Indiana Full Crew Law and thus erroneously decided the question of law concerning the appropriate construction of the term "main line track."

(C) The Indiana Appellate Court sustained the determination of the Public Service Commission by its opinion dated October 29, 1970. However, by the Appellate Court's own admission it limited its judicial review to the sole question of whether there was substantial evidence to support the Commission's decision and refused to review the questions of law involved.

(D) Due process of law under both the Indiana State Constitution, Article 1, Section 12, and under the provisions of the Fourteenth Amendment to the Constitution of the United States requires judicial review of questions of law when the party involved is resisting the enforcement of a legal obligation.

(E) The restricted scope of judicial review accorded the Appellate Court was not cured when the Supreme Court of Indiana failed to grant IHB's petition to transfer since the Indiana Supreme Court also refused to review the questions of law involved and to accord judicial review to the IHB.

3. The substantial questions raised by these facts and circumstances which will be presented to the United States Supreme Court are as follows:

(a) The failure and refusal of the Appellate Court and this Court to review the determination of the Public

Service Commission of the question of law relating to the proper construction of the term "main line track" as contained in the Indiana Full Crew Law has deprived the IHB of its constitutional right to a judicial review of questions of law determined by an administrative agency in violation of the Due Process of Law Clause of the Fourteenth Amendment to the Constitution of the United States and the due course of law provision of the Indiana Constitution. *State ex rel. City of Marion* v. *Grant Circuit Court* (1959), 239 Ind. 315, 157 N.E.2d 188; *Ng Fung Ho* v. *White* (1946), 259 U.S. 276, 42 S.Ct 492, 66 L.Ed. 423; and concurring opinion of Justice Brandeis in *St. Joseph Stock Yards Co.* v. *United States* (1936), 298 U.S. 38, 56 S.Ct. 720, 80 L.Ed. 1033.

(b) The restriction by the Appellate Court of Indiana of its judicial review of a determination of the Public Service Commission, an administrative agency, as to whether there was substantial evidence of probative value to support the Public Service Commission's decision violates the IHB's rights to due process of law under the Fourteenth Amendment to the Constitution of the United States which requires Judicial review of questions of law, procedure and substantial evidence when a party is resisting enforcement of a legal obligation by an administrative body. See cases cited in support of (a) above and see also 4 Davis *Administrative Law Treatise* § 28.19, p. 106.

(c) The failure of the Appellate Court to review the construction of the statute given by the Public Service Commission prevented the plaintiff from being able to present to the Supreme Court of this state the new question of law erroneously decided by the Appellate Court and thus denied the defendant the Equal Protection of the Laws under the Fourteenth Amendment to the Constitution of the United States.

(d) The failure of the Appellate Court to review the construction of the statute given by the Public Service Commission was in violation of the provisions of Article 1, Section 12 of the Indiana Constitution, and by denying the IHB such rights of review while at the same time reviewing a question of law assigned by the Brotherhood of Locomotive Trainmen and Enginemen as the basis for cross-errors, the IHB has been denied Equal Protection of the Law in violation of the Fourteenth Amendment to the Constitution of the United States.

4. By order of the Public Service Commission the IHB has been required to comply with the provisions of the Indiana Full Crew Law. Unless a stay of the Public Service Commission's order is granted, the IHB must either comply with the order during the pendency of the petition for certiorari or subject itself to the imposition of statutory penalties for each train movement made without a fireman. Neither of these courses of action presents a realistic alternative. Once firemen have been hired, even if the Supreme Court of the United States ultimately reversed the decision, labor agreements will make it virtually impossible to get rid of the firemen. The added expense of employing firemen will virtually bankrupt the IHB in a matter of three months since a minimum of 78 firemen would be required to be employed to fully comply with the Full Crew Law. This additional expense for the first 12 months (far in excess of what was originally estimated at the time an application for injunction in the Appellate Court was made) would be a minimum of $939,697, with each year thereafter requiring expenditures in excess of $939,697.

If this expenditure had to be continued in future years, not because of the applicability of the Full Crew Law but because of the IHB being required to continue firemen's employment due to labor agreements, the result would be economic disaster for totally unnecessary purposes. In

addition, this figure of $939,697 does not include the cost to IHB of acquiring and processing the applications of 78 new employees and the disruption of the working assignments and hours of existing crews.

5. By contrast, the granting of this stay will not jeopardize the safety of employees of the IHB. Since May of 1964 the IHB has operated without firemen except on a very limited number of assignments, the total not exceeding 13. During this period the IHB has received the following safety awards:

1964 National Safety Council Award, Group A Safety Award for Switching and Terminal Railroad

1966 Harriman Memorial Award Certificate of Commendation for Switching and Terminal Railroad

1967 Harriman Memorial Award, Bronze Medal for Switching and Terminal Railroad

1970 Harriman Memorial Award, Bronze Medal for Switching and Terminal Railroad

6. In short, the IHB's petition herein merely seeks to preserve the status quo which has obtained for the last seven and one-half years. If the petitioner is correct in its challenge to the determination by the Appellate Court and this Court, a stay will preserve the present state of affairs and preclude the confusion and expense of first hiring and then retaining unneeded personnel due to collective bargaining agreements. If, on the other hand, the IHB ultimately loses in its petition to the Supreme Court, no hardship will be imposed on anyone since the trains have been operating safely without firemen for more than seven and one-half years.

Wherefore, The Indiana Harbor Belt Railroad Company respectfully urges this Court to enter an order staying the mandate and the proceedings on the decision and judgment of this Court and the effect of the order of the

Public Service Commission pending the filing of a Petition for Certiorari in the United States Supreme Court and that Court's consideration of and decision on that petition and, if certiorari is granted, pending issuance of the judgment of the United States Supreme Court.

Respectfully submitted,

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TERRILL D. ALBRIGHT

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of Counsel

VERIFICATION

Terrill D. Albright, being duly sworn, upon his oath says that he is one of the attorneys for Indiana Harbor Belt Railroad Company in the above entitled cause, that he has read the above and foregoing Petition by Indiana Harbor Belt Railroad Company for Stay of Mandate and Effective Date of Decision and knows the contents thereof, and that the allegations and statements therein contained, and each of them, are true.

TERRILL D. ALBRIGHT

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 19th day of October, 1971.

Witness my hand and Notarial Seal.

JANET WINTON, Notary Public

My commission expires:
August 30, 1975